IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 10TH JANUARY 2007 / 20TH POUSHA 1928

WP(C).No. 7 of 2007(A)

PETITIONER:

TELECOM TOWER & INFRASTRUCTURE (P) LTD.,
41/256, C-19, SECOND FLOOR, MATHER SQUARE,
OPP. NORTH RAILWAY STATION, COCHIN-682018,
REPRESENTED BY EXECUTIVE (SITE ACQUISITIONS &
ADMINISTRATION), MR. RAHUL DAS.

BY ADV. SRI.SANTHOSH MATHEW
SRI.SATHISH NINAN

RESPONDENT:

MEENADOM GRAMA PANCHAYAT,
MEENADOM P.O., KOTTAYAM DISTRICT-686516,
REPRESENTED BY ITS SECRETARY.

BY ADV. SRI.JOSE PALLATTUKARAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

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W.P.(C) No.7 OF 2007

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DATED THIS THE 10th JANUARY, 2007

J U D G M E N T

The petitioner-Company which is part of the ESSAR Group and has set up 68 Mobile Telecommunication towers throughout the State of Kerala for enhancing the net work coverage for various Mobile operators after having obtained the requisite no-objection certificate from the local authorities concerned and consent from the Pollution Control Board for operation of a Diesel Generator for the respective sites is aggrieved by Ext.P1 order passed by the respondent-Panchayat declining permission to the petitioner for the construction of a telecom tower within the limits of the said Panchayat.

2. A detailed counter affidavit has been filed by the Panchayat wherein it is stated that Ext.P1 has been issued by the Secretary of the Panchayat on the basis of Ext.R(a) resolution of the Panchayat Committee. Every aspects of the matter relating to the ill-effects if the proposed telephone tower is constructed were considered by the Committee. The members of the Committee were of the opinion that installation of a building for mobile station and its functioning would cause health hazards to the people of the locality. Lightning chances

and the risks arising therefrom are very high and the people of the Panchayat will be exposed to imminent danger if the proposed building is constructed. It was therefore that the Committee took a unanimous decision to reject the application submitted by the petitioner for building permit. The Secretary of the Panchayat has received a mass petition from the residents of the Panchayat area. It is alleged therein that installation of a mobile station and its functioning would cause health hazards to the people who are residing nearby. The signatories in the mass petition have even cautioned that if the Panchayat issues permission, the same will be resisted tooth and nail. The residents of the nearby Pampady Panchayat are also protesting against that Panchayat for granting permission for the construction of a mobile station tower. The respondent-Panchayat also apprehends similar protest from its residents. Since the local area of the respondent-Panchayat is much lesser than that of the Pampady Panchayat, the hazard which would be caused to the inhabitants will be greater.

3. While Sri.Jose Pallattukaran, counsel for the respondent-Panchayat would make fervent submissions on the basis of the counter affidavit and Ext.R(a) resolution in support of Ext.P1, Sri.Santhosh

Mathew would invite my attention to the judgment of the Division Bench of this Court in **Reliance Infocom Ltd. v. Chemanchery Grama Panchayat** (2006 (4) KLT 695) and to my own judgment in W.P.(C)No.32799 of 2006 as also to the judgment of Thottathil B.Radhakrishnan, J. in W.P.(C)No.179 of 2006. Considering the observations of the Division Bench in **Reliance Infocom's** case and my own judgment in W.P.(C)No.32799 of 2006 and the judgment of Thottathil B.Radhakrishnan, J. in W.P.(C)No.179 of 2006 and the important circumstance that the BSNL has already been permitted to install a like tower in the respondent-Panchayat, I am of the view that the Panchayat was not justified in turning down the petitioner's request for permission for construction of the mobile tower relying only on the circumstance that there is complaint from the local public.

4. The result is, Ext.P1 will stand quashed and there will be a direction to the respondent-Panchayat to reconsider the petitioner's application for building permit. The Panchayat shall be governed by the provisions of Section 235L of the Panchayat Raj Act and also the relevant provisions of the Kerala Municipality Building Rules, 1999 dealing with telecommunication towers. Before taking fresh decision, hearing opportunity will be given to the petitioner and also to the first

signatory in the mass petition referred to in the counter affidavit submitted by the Secretary of the Panchayat before this Court.

The Writ Petition is disposed of as above.

(PIUS C. KURIAKOSE, JUDGE)

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